

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 14, 2002

IN RE:

DOCKET TO DETERMINE THE COMPLIANCE
OF BELL SOUTH TELECOMMUNICATIONS,
INC.'S OPERATIONS SUPPORT SYSTEMS
WITH STATE AND FEDERAL REGULATIONS

DOCKET NO.
01-00362

ORDER DENYING BELL SOUTH TELECOMMUNICATION, INC.'S
MOTION FOR RECONSIDERATION AND SETTING A HEARING
PURSUANT TO TENN. CODE ANN. § 65-4-120

This matter came before the Tennessee Regulatory Authority ("Authority" or "TRA") at a regularly scheduled Authority Conference held on February 5, 2002 for consideration of the *Motion for Reconsideration* filed by BellSouth Telecommunications, Inc. on January 15, 2002.

Background:

On September 17, 2001 AT&T Communications of the South Central States, Inc. ("AT&T"), TCG MidSouth, Inc. ("TCG"), and the Southeastern Competitive Carriers Association ("SECCA") jointly filed Interrogatory No. 36, which stated:

From January 2001 to present, for each individual state in BellSouth's region and for the BellSouth region in total, please identify the achieved flow-through rate and the CLEC error excluded flow-through rate, by interface (*i.e.*, LENS, TAG, EDI and all interfaces) for the following categories: a) LNP; b) UNE; c) Business Resale; d) Residence Resale;

and e) Total (i.e., UNE, Business Resale, and Residential Resale combined).¹

BellSouth filed *Objections to First Interrogatories and Request for Production of Documents of AT&T and SECCA* on September 24, 2001. This document did not include an objection to Interrogatory No. 36.

Nevertheless, in its responses to interrogatories filed on October 12, 2001, BellSouth declined to provide the information requested in Interrogatory No. 36, stating that it “does not produce this data on flow-through rates on a per state basis.” In an attachment to its response, BellSouth provided a file purporting to show “the achieved flow-through rate and the CLEC [competitive local exchange carriers] error excluded flow-through rate, by interface for the months of January 2001 through August 2001” on a regional basis. Nowhere in this discovery response did BellSouth explicitly object to this discovery request or raise the issue of the technical feasibility of responding to this interrogatory.

On November 2, 2001, AT&T and TCG filed a *Motion to Compel Complete Answers* to specific discovery requests. Among the discovery requests that were purported to be incomplete was Interrogatory No. 36.

The Pre-Hearing Officer addressed the issue of BellSouth’s failure to respond to Interrogatory No. 36 during the November 8, 2001 Pre-Hearing Conference. During the Pre-Hearing Conference, BellSouth did not clearly indicate whether the requested data existed or was available, representing only that it did not know whether the requested

¹ *In re Docket to Determine the Compliance of BellSouth Telecommunications, Inc.’s Operations Support Systems with State and Federal Regulations*, TRA Docket No. 01-00362 (hereinafter “OSS Docket”) (AT&T Communications of the South Central States, TCG MidSouth, Inc. and the Southeastern Competitive Carriers Association, First Set of Interrogatories to BellSouth Telecommunications, Inc., p. 16).

data could be extracted in the manner suggested by AT&T.² In response, AT&T asserted that a KPMG witness who worked on the flow-through evaluation in Georgia had testified that BellSouth had the capability to provide state-specific flow-through reports. In addition, AT&T stated that BellSouth's flow-through reports are a computer program that runs on a database containing flags to identify the state referenced, a fact that could assist in the retrieval of the information. AT&T explained that the requested information would either confirm or contradict the claim that BellSouth's ordering systems perform substantially the same from state to state for flow-through purposes.³ In response, BellSouth reiterated that it did not produce flow-through reports on a state by state basis and was unsure whether it could.⁴ After hearing considerable argument, the Pre-Hearing Officer ordered BellSouth to either produce the requested data or explain in writing why producing such data is not technically feasible. BellSouth was ordered to file the data or a written explanation no later than November 13, 2001.⁵

BellSouth failed to comply with this order. On November 14, 2001, the Pre-Hearing Officer issued the *Order Resolving Procedural Motions*, which addressed the production of the flow-through data as follows:

Without a state specific flow-through report, it is impossible to determine if the performance from one or more states provides performance at a level sufficient to make up for any state that may not be performing well enough to meet satisfactory standards. This is particularly important when one considers the controversy surrounding Direct Order Entry (DOE) and Service Order Negotiation System (SONGS). According to BellSouth these systems have no material difference in functionality or reporting. This information could prove important in determining the regionality of BellSouth's OSS.

² *OSS Docket* (Transcript from November 8, 2001 Pre-Hearing Conference p. 61, 63-64).

³ *Id.*, p. 56.

⁴ *Id.*, pp. 54, 57.

⁵ *Id.*, pp. 63-64.

In addition, BellSouth produces state-specific reports on firm order confirmation ("FOC") timeliness and rejection notice timeliness which are further broken down into totally mechanized, partially mechanized and manual. This further confirms that BellSouth has the state specific flow through information requested by AT&T. However, there is no indication either by AT&T or in BellSouth's publicly available *Monthly State Summary* of its wholesale performance that such flow through information is available or can be generated by the type of interface as requested by AT&T. Therefore, BellSouth is only required to provide the requested information by category but not broken down by the type of interface.⁶

The Pre-Hearing Officer concluded the *Order Resolving Procedural Motions* with the following directive:

6. The Motion to Compel Discovery filed by AT&T and TCG is granted in part as to Interrogatory No. 36. BellSouth is ordered to provide no later than **Tuesday, November 20, 2001** the achieved flow-through rate and the CLEC error excluded flow-through rate for each individual state in BellSouth's region and for the BellSouth region in total for the following categories: a) LNP; b) UNE; c) Business Resale; d) Residential Resale; and e) Total (*i.e.*, UNE, Business Resale, and Residential Resale combined).⁷

On November 16, 2001, BellSouth filed *Supplemental Responses to Interrogatories and Requests for Production*. BellSouth's document indicates that AT&T issued the following supplemental request with regard to Interrogatory No. 36:

BellSouth states that it does not produce flow-through data on a state-specific basis. According to KPMG, however, BellSouth is capable of producing such data. BellSouth, therefore, should either produce the requested data or explain why producing such data is not technically feasible.⁸

BellSouth responded in pertinent part that

[it] has reviewed the Georgia Third Party Test, Florida Third Party Test Exceptions and Observations as well as the Georgia Third Party Test KPMG Consulting Flow-Through Evaluation Final Report. There is no

⁶ *OSS Docket (Order Resolving Procedural Motions*, p. 24-25).

⁷ *Id.* at p. 27.

⁸ *OSS Docket (BellSouth's Nonproprietary Supplemental Responses to Interrogatories and Requests for Production*, Supplemental Item No. 36, p. 1) (quoting AT&T's supplemental interrogatories).

mention of the state-specific reports or any questions about BellSouth's capability to produce State Specific Reports for Flow-through nor are there any exceptions or observations that addressed this issue . . . BellSouth's position remains the same. AT&T is misinformed on this issue. BellSouth has no record of an issue of state-specific reporting capability for Flow-Through Reports in the Flow-Through Evaluation (FT-1) conducted by KPMG in their OSS Evaluation for the Georgia Public Service Commission. Unless AT&T can identify the KPMG Exception or Observation as part of either the Georgia or Florida Third Party Test, or indicate where this capability is addressed in the Flow-Through Evaluation Final Report, BellSouth maintains that the Flow-Through Report is a regional report as indicated in the SQM. . . If technical feasibility could be determined, the development effort to implement such a measurement would require considerable programming effort and its associated costs.⁹

On November 20, 2001, BellSouth filed a *Motion to Clarify Order Regarding AT&T Interrogatory No. 36*, arguing that "even if it were technically feasible to generate these reports, it is absolutely impossible to do so on one business day's notice." BellSouth also contended that the portion of the *Order Resolving Procedural Motions* addressing Interrogatory No. 36 was inconsistent with the Pre-Hearing Officer's oral directive at the Pre-Hearing Conference on November 8, 2001 and that it was not required to create documents not already in existence under Tenn. R. Civ. P. 34.¹⁰

On November 21, 2001, the Pre-Hearing Officer issued the *Order Denying Motion to Clarify Order Regarding AT&T Interrogatory No. 36*. The Pre-Hearing Officer once again ordered BellSouth to provide the information requested in Interrogatory No. 36, this time no later than November 29, 2001.

On November 29, 2001, BellSouth filed its *Second Supplemental Responses to Interrogatories and Requests for Production*, in which it stated in pertinent part:

⁹ *Id.*

¹⁰ See Tenn. R. Civ. P. 34, which governs Requests for Production of Documents. The discovery request at issue is an Interrogatory, governed by Tenn. R. Civ. P. 33.

The underlying data necessary to calculate such rates does exist, in some form, inasmuch as BellSouth retains information regarding LSRs submitted and information regarding those LSRs in its databases.

Since the data does exist in some form, with the appropriate programming work, time and expenditure, a program could be created that could extract such information on a state-by-state basis.

BellSouth has researched this matter, and has instructed its affected employees to determine what would be required in order to do such programming to respond to the subject data request. In response, those BellSouth employees have indicated that if the task were begun on November 30, 2001, it would take until the first week in March, 2002, and at a substantial cost, to accomplish this task, a period of more than 90 days.¹¹

With this language, BellSouth acknowledged without equivocation, for the first time in this proceeding, that the data required to generate the requested reports existed.

December 3, 2001 Hearing

The Hearing on the merits in this proceeding commenced on Monday, December 3, 2001. During the Hearing, the agency addressed the issue of BellSouth's failure to provide the information requested in AT&T's Interrogatory No. 36 and BellSouth's failure to comply with the Pre-Hearing Officer's *Order* requiring that BellSouth provide the specific information on the flow-through issue.

Several witnesses testified during the Hearing, including Andrew James Saville, Director of Interconnection Services for BellSouth, specializing in the development and production of performance metrics and Ronald M. Pate, a BellSouth executive who has acted as an expert witness with regard to BellSouth's Operations Support System.¹²

¹¹ *OSS Docket* (BellSouth's *Second Supplemental Responses to Interrogatories and Requests for Production*, Supplemental Item No. 36, p. 2).

¹² *OSS Docket* (Transcript of Hearing, December 3, 2001, p. 140).

Mr. Saville testified that BellSouth possessed an existing flow-through data base that could be modified to produce the requested information.¹³ Mr. Saville testified that BellSouth has approximately 7,800 lines of code for flow-through but only some of the code would need to be rewritten to provide the flow-through information.¹⁴ In his testimony, Mr. Saville referred to a chart that delineated the time he felt was necessary to complete the modifications. The chart indicated that the modifications would take ninety days, including twenty-five days for construction, and twenty-nine days for testing.

After the record and the testimony were considered, BellSouth was again ordered, on December 3, 2001, to provide the flow-through information and was directed to file the information not later than January 18, 2002.¹⁵ This verbal order was memorialized in the *Order on Procedural Matters* issued on December 31, 2001.

BellSouth's Motion for Reconsideration: Positions of the Parties

On January 15, 2002, BellSouth filed a *Motion for Reconsideration* of the *Order on Procedural Matters*. BellSouth argues that the length of time it was given to produce the requested information was unreasonable and unsupported by the record. In effect, BellSouth argues that the agency is required to base its decision solely upon the undisputed evidence presented, without regard to any agency expertise or analysis of the evidence. According to BellSouth, because Mr. Saville, a BellSouth witness testified that the information could be provided no sooner than ninety (90) days, and no other evidence on the issue was admitted, the agency was required to provide BellSouth with ninety (90)

¹³ *Id.* at 146.

¹⁴ *Id.*

¹⁵ *OSS Docket* (Transcript of Hearing, December 3, 2001, p. 195).

days from December 3, 2001 to provide the information.

Specifically, BellSouth maintains the following findings and conclusions in the December 31, 2001 *Order* were erroneous: (1) that the program was not so large as to require a full ninety days to revise it; (2) that an organization as sophisticated as BellSouth could use more programmers to accomplish the task at hand and thereby cut the programming time in half; (3) that if two people could test the program in 16 days, four employees could reduced the time to eight days; and (4) that the programming which BellSouth maintains is necessary might not be necessary based on the testimony of an employee of KPMG that the data used to create a performance measures report can be broken down by state.¹⁶

AT&T, TGC, SECCA and MCI Worldcom, Inc. (hereinafter referred to collectively as "AT&T") filed their *Opposition to BellSouth's Motion for Reconsideration of Hearing Officer's Order Regarding AT&T Interrogatory No. 36 of AT&T Communications of the South Central States, Inc., TCG MidSouth, Inc. Southeastern Competitive Carriers Association and MCI Worldcom, Inc.* on January 22, 2002. AT&T responds that the forty-five (45) day deadline for filing the response to Interrogatory No. 36 was reasonable. AT&T asserts that BellSouth continues to justify its delay with evidence the TRA has already found not credible, rather than presenting details of its efforts to comply with the TRA's deadline. AT&T asks the TRA to sanction BellSouth depending on the results of an inquiry into the extent to which BellSouth has made a good faith attempt to comply with the TRA's deadline. AT&T maintains that if BellSouth has used its best efforts to comply with the deadline, then the agency should

¹⁶ *Id.*, pp. 10-12.

grant BellSouth an extension of time to file the response. If the inquiry shows that BellSouth has not used its best efforts to comply with the deadline, AT&T requests that the TRA: (1) strike all of BellSouth's evidence regarding the regionality of its ordering OSS or (2) prohibit BellSouth from contesting the reasonableness of AT&T's Hearing Exhibit No. 8 as a surrogate for state-specific flow through rates.¹⁷ AT&T requests that the agency extend the deadline to file post-hearing briefs to allow an analysis of the response to Interrogatory No. 36 to be included in the briefs.¹⁸

On January 25, 2002, the TRA issued an agenda for the February 5, 2002 Authority Conference, notifying the parties that this matter would be considered by the Directors at that Conference.

February 5, 2002 Authority Conference

During their deliberations at the February 5, 2002 Authority Conference, the Directors considered the record in this case, including the Pre-Hearing Officer's *Orders* of November 8, 2001, November 14, 2001, and November 21, 2001, each of which ordered BellSouth to provide the information requested in Interrogatory No. 36.

When asked by the Authority why, given the aforementioned orders, BellSouth did not direct the relevant persons to begin work to respond to Interrogatory No. 36 before December 3, 2001, BellSouth responded:

The November 8th transcript shows – I think fairly read – that Director Greer said by November 13th either tell us that it's not technically feasible to do it or do it. I think that's what he said. And our position was then and is now that it was not technically feasible to get this done. If we had started on the date that we had gotten the original request from AT&T,

¹⁷ AT&T Hearing Exhibit No. 8 is a monthly state summary for August 2001 for Tennessee, Georgia and Florida.

¹⁸ See Transcript of January 23, 2002 Authority Conference, pp. 14-24 (during which the agency extended the time for filing post-hearing briefs and proposed findings of fact and conclusions of law for seven (7) and twenty-one (21) business days, respectively, from the date BellSouth files the flow-through data.

which I believe was September 18th, September 17th, that we could not have gotten this done even if we had understood and thought that we were obligated to do it by the time of the hearing. It wasn't technically feasible to get it done within that time frame. And, indeed, that is what I believe is supported by the evidence that Mr. Saville gave when he appeared here in person.¹⁹

When asked, in effect, why BellSouth did not change its strategy of arguing that producing the requested information was not technically feasible after the Pre-Hearing Officer ordered BellSouth to produce the information, BellSouth further responded:

Well, there's no question that on the 14th of November, the hearing officer said produce the information. But it was our – perhaps expectation is the wrong word. We thought we had the opportunity to say it's not technically feasible to produce it or to produce it.²⁰

When asked whether it was BellSouth's position that it was not technically feasible to produce the information or that it was not technically feasible to produce the information within the time period as originally requested, BellSouth responded that it was not technically feasible to produce the information between September 17th, when the interrogatory was filed, and the December 3rd hearing date. BellSouth admitted, however, that it did not make known its position on the technical feasibility of the time period until its filing on November 29, 2001.²¹

After this exchange, the Authority addressed the substance of BellSouth's *Motion*

¹⁹ Transcript of February 5, 2002 Authority Conference.

²⁰ *Id.*

²¹ *Id.*

for Reconsideration.²² After extensive discussion, a majority of the Directors denied BellSouth's *Motion for Reconsideration*.²³ Given BellSouth's contention that it could not produce the information until the third week in February, the Authority did not order the

²² Director Greer analyzed the *Motion for Reconsideration* as follows:

Well, even though Mr. Saville was the only witness that has testified directly about this issue, the Authority is not legally bound to unconditionally accept his testimony. Based on the Authority's expertise, Directors agreed at the time that 45 days was a more reasonable time frame than the 90 days proposed by BellSouth. The 45 days did not include any of the 35 days which had already elapsed since BellSouth was ordered to respond to the interrogatory. Contrary to BellSouth's *Motion for Reconsideration* claiming that Mr. Saville clearly stated that BellSouth's proposed schedule was aggressive, Mr. Saville's actual testimony is that BellSouth's proposed schedule is, quote, "slightly on the aggressive side," close quote. If BellSouth's proposed schedule is only slightly aggressive, then the schedule to which the Directors agreed is properly more aggressive in comparison. Further, contrary to BellSouth's claim, Mr. Saville's testimony was equivocal on the issue of whether putting more programmers on the task would be less efficient. In his words, "different programmers' programming styles have the potential to interact with each other and might interact differently." It is not clear how the potential for interaction of the prospect that the code might interact necessarily lengthens the testing phase. Such untested, ambiguous assertions are insufficient to support BellSouth's claim that Mr. Saville's testimony should be accepted without challenge. Also contrary to BellSouth's claim that Mr. Saville would be unable to vouch for the interrogatory response if it is forced to provide the data in a shorter time than the 90-day period if proposed, Mr. Saville's actual testimony was that if, quote, "testing time," close quote, he proposed were shortened that he would not be willing to vouch for the resulting data. Regardless, my December 31st written order to follow up the order of December the 5th from the bench, does not remove the necessary testing time, it only shortens the testing execution phase. Further, the only time for validating the reports from the integration system and performance testing by the utilization of additional manpower was shortened. This in my opinion was very reasonable. Based on these factors and the factors I have previously mentioned, I would like to move to deny BellSouth's motion for reconsideration and to order BellSouth to file the requested information immediately. I would further move that we hold hearings on February the 20th at 9:00 a.m. to consider sanctions for BellSouth's failure to comply with the Authority's order.

²³ In seconding the motions, Director Malone stated that, after hearing and fully considering BellSouth's evidence at the December 3rd Hearing, he found such evidence not fully credible, and he concluded that the action of the agency taken on December 3rd requiring BellSouth to file the response to Interrogatory No. 36 within the forty-five (45) day timeframe was reasonable and not arbitrary. Director Malone further stated that, while he did not agree in full with the December 31st *Order on Procedural Matters*, he unequivocally supported the result and the timeframe included therein. Director Malone stated that, given the impropriety of BellSouth's strategy of refusing to comply with lawful orders and continuing to argue its position after orders on the matter had issued, setting a date for the consideration of penalties for BellSouth's failure to comply with the Pre-Hearing Officer's orders was appropriate.

information filed immediately. Notwithstanding, the same majority²⁴ of the Directors determined that BellSouth had failed to produce the information as ordered on several occasions by the Authority and scheduled a Hearing on **Wednesday, February 20, 2002 at 9:00 a.m.** for the purpose of determining whether BellSouth shall be subject to a penalty, pursuant to Tenn. Code Ann. § 65-4-120, for violating or failing to comply with the Authority's lawful orders.²⁵ Specifically, BellSouth failed to comply with the following Authority orders:

- (1) the Pre-Hearing Officer's November 8, 2001 oral order directing BellSouth to either produce the requested data or explain in writing why producing such data was not technically feasible by November 13, 2001;
- (2) the Pre-Hearing Officer's November 14, 2001 *Order Resolving Procedural Motions*, which ordered BellSouth to provide no later than Tuesday, November 20, 2001 the achieved flow-through rate and the CLEC error excluded flow-through rate for each individual state in BellSouth's region and for the BellSouth region in total for the following categories: a) LNP; b) UNE; c) Business Resale; d) Residential Resale;

²⁴ Chairman Kyle did not vote with the majority on either of the motions. In deliberating her decisions, Chairman Kyle stated:

Commissioner Greer, you've worked really hard, and I know this has been a lot of your time and effort. And I thoroughly respect all that you have given to this particular docket. And I very cautiously ever try to veer away from a prehearing officer unless I have strong reason. What I think that I would like to see here is the information. What situation I do not want to get into is if the information is produced in a time shorter than Bell said they could produce it but would produce something and wouldn't certify it, then I would not have data that they could certify or vouch for. And that's exactly, Mr. Lackey, what you would be telling me; is that correct?

After BellSouth agreed with Chairman Kyle, she continued:

Well, let me just discuss this with you a minute. One, you could get the data in this shorter period of time and he might vouch for it. Number 2, he might say, well, you've given me a longer period of time but I need an extension and then I'll vouch for it. But is it his position that he will not vouch for this, or you-all, you being Bell, cannot certify this data in this shorter period of time?

After assuring that BellSouth would vouch for the information if permitted to file it during the third week in February, Chairman Kyle concluded, "I'm willing to go for the extra time. I don't think that that's not what has been said earlier. I want the information and it presented in a position that it can be certified. That's what I think that we need. I would be willing to give you that extra length of time."

²⁵ The Orders of the Authority requiring BellSouth to provide the information sought in AT&T's Interrogatory No. 36 follow the procedure established for compelling discovery and entering sanctions as set forth in the Tennessee Rules of Civil Procedure, as adopted in the Authority's Rules of Practice and Procedure.

and e) Total (*i.e.*, UNE, Business Resale, and Residential Resale combined);

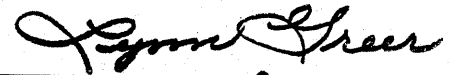
- (3) the Pre-Hearing Officer's November 21, 2002 *Order Denying Motion to Clarify and Compelling Discovery*, which required BellSouth to provide the requested information not later than 12:00 Noon on Thursday, November 29, 2002;
- (4) the oral order of December 3, 2001 requiring BellSouth to provide the requested information within forty-five (45) days; and
- (5) the December 31, 2001 *Order on Procedural Matters* which memorialized the oral ruling of December 3, 2001, requiring BellSouth to provide the information not later than January 18, 2002.

IT IS THEREFORE ORDERED THAT:

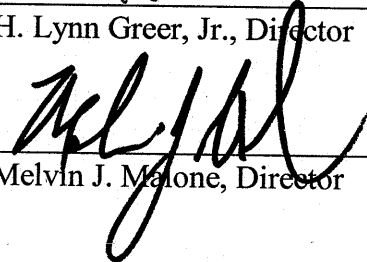
1. The *Motion for Reconsideration* filed by BellSouth on January 15, 2002 is denied.
2. BellSouth is hereby ordered to immediately file the following information with the TRA: the achieved flow-through rate and the CLEC error excluded flow-through rate for each individual state in BellSouth's region and for the BellSouth region in total for the following categories: a) LNP; b) UNE; c) Business Resale; d) Residential Resale; and e) Total (*i.e.*, UNE, Business Resale, and Residential Resale combined).
3. The parties are ordered to appear for a Hearing on **Wednesday, February 20, 2002 at 9:00 a.m.** at the Hearing Room on the Ground Floor at 460 James Robertson Parkway, Nashville, Tennessee, for the purpose of determining whether BellSouth shall be subject to a penalty, pursuant to Tenn. Code Ann. § 65-4-120, for violating or failing to comply with the lawful orders of the Authority. The Hearing shall be conducted in accordance with the Tennessee Uniform Administrative Procedures Act, Tenn. Code

Ann. §4-5-101 *et seq.*²⁶ All parties are entitled to be represented by counsel.

Sara Kyle, Chairman



H. Lynn Greer, Jr., Director



Melvin J. Malone, Director

ATTEST:



K. David Waddell, Executive Secretary

²⁶ A separate *Notice of Complaint and Hearing* was issued and sent to all parties on February 6, 2002. (Attached hereto). That *Notice* also set forth a filing date of February 13, 2002 for the filing of briefs by the parties.

TENNESSEE REGULATORY AUTHORITY

Sara Kyle, Chairman
Lynn Greer, Director
Melvin Malone, Director



460 James Robertson Parkway
Nashville, Tennessee 37243-0505

NOTICE OF COMPLAINT AND HEARING

DOCKET: 01-00362

IN RE: Docket to Determine the Compliance of BellSouth
Telecommunications, Inc.'s Operations Support Systems with State
and Federal Regulations

DATE: February 5, 2002

At a regularly scheduled Authority Conference of the Tennessee Regulatory Authority ("Authority") held on February 5, 2002, a majority of the Directors determined that BellSouth Telecommunications, Inc. ("BellSouth") failed to comply with lawful orders and/or findings of the agency.¹ At that Conference, the Authority set a Hearing on **Wednesday, February 20, 2002** for the purpose of determining whether BellSouth Telecommunications, Inc. ("BellSouth") shall be subject to a penalty, pursuant to Tenn. Code Ann. § 65-4-120, for violating or failing to comply with the following lawful orders of the Authority:

- (1) the Pre-Hearing Officer's November 8, 2001 oral order directing BellSouth to either produce the requested data or explain in writing why producing such data was not technically feasible by November 13, 2001;
- (2) the Pre-Hearing Officer's November 14, 2001 *Order Resolving Procedural Motions*, which ordered BellSouth to "provide no later than **Tuesday, November 20, 2001** the achieved flow-through rate and the CLEC error excluded flow-through rate for each individual state in BellSouth's region and for the BellSouth region in total for the following categories: a) LNP; b) UNE; c) Business Resale; d) Residential Resale; and e) Total (i.e., UNE, Business Resale, and Residential Resale combined)."²

¹ Chairman Kyle did not vote with the majority.

² *In re Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations*, TRA Docket No. 01-00362 (*Order Resolving Procedural Motions*, p. 27).

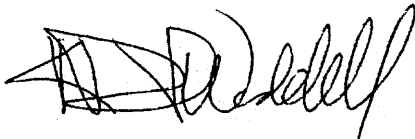
- (3) the Pre-Hearing Officer's November 21, 2002 *Order Denying Motion to Clarify and Compelling Discovery*, which required BellSouth to provide the requested information not later than 12:00 Noon on Thursday, November 29, 2002;
- (3) the oral order of December 3, 2001 requiring BellSouth to provide the requested information within forty-five (45) days; and
- (4) the December 31, 2001 *Order on Procedural Matters* which memorialized the oral ruling of December 3, 2001.

At the Hearing, the Directors will consider the record of the proceedings, argument of the parties and any other relevant information proffered by the parties regarding the nature and number of violations and the calculation of any penalty. The parties are directed to file briefs on these issues no later than **2:00 p.m. on Wednesday, February 13, 2002.**

The Hearing in this proceeding shall take place at **9:00 a.m. on Wednesday, February 20, 2002** in the Hearing Room on the Ground Floor at 460 James Robertson Parkway, Nashville, TN. The Hearing shall be conducted in accordance with the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. §4-5-101 *et seq.* All parties are entitled to be represented by counsel.

Participants with disabilities who require special accommodations or alternate communications formats should contact the Tennessee Regulatory Authority ADA-EEO/AA Coordinator/Officer, 460 James Robertson Parkway, Nashville, Tennessee 37243-0505 or 1-800-342-8359 so that reasonable accommodations can be made.

FOR THE TENNESSEE REGULATORY AUTHORITY:

A handwritten signature in black ink, appearing to read 'K. David Waddell', with a stylized, cursive script.

K. David Waddell, Executive Secretary

cc: Parties of Record